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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/865,904	05/24/2001	Yuri Yapor		5331

7590 04/20/2005  
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2958 Barkley Ave.  
Santa Clara, CA 95051

EXAMINER

OSMAN, RAMY M

ART UNIT	PAPER NUMBER
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2157

DATE MAILED: 04/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/865,904	Applicant(s) YAPORT ET AL.	
	Examiner Ramy M Osman	Art Unit 2157	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12/28/2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) 6-9, 14 and 16-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 28 and 29 is/are rejected.
- 7) ☒ Claim(s) 5, 10-13 and 15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Status of Claims***

1. This action is responsive to the amendment filed on December 28, 2004. Claims 1,2,4,5,10-13 and 15 were amended. Claims 28 and 29 were newly added. Claims 6-9,14 and 16-27 were cancelled. Claims 1-29 are pending.

### ***Specification***

2. The disclosure is objected to because of the following informalities:

On page 3 line 4, "locates" should be changed to "is located".

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1,28 and 29 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The limitation "sending a random portion from the plurality of data portions" is unclear. It is unclear whether this limitation means sending a portion of a portion, or if it is randomly sending one of the portions. Applicant is requested to clarify the subject matter.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. **Claims 1-4,28 and 29 rejected under 35 U.S.C. 102(e) as being anticipated by Waldvogel et al (US Patent No 6,823,394).**

7. In reference to claims 1 and 29, Waldvogel teaches a method and a machine executable code to perform a method of data transmission on demand to a plurality of clients without acknowledgement, the method comprising:

Dividing information content stored on a server into a plurality of data portions (column 2 lines 40-45 and column 4 lines 1-7);

Constantly transmitting the plurality of data portions to at least one router on a server side for constant availability of the information content to the plurality of clients (column 4 lines 34-36, column 8 lines 30-36 and column 9 lines 1-3, Waldvogel discloses multicasting a datastream all the time at a constant-bit-rate via a server side stream encoder [figure 2 #110]);

Upon receiving a content request at one of a plurality of channels at the at least one router from one of the plurality of clients, sending a random portion from the plurality of data portions to the one of the plurality of clients, the random portion comprising data indicating whether the random portion is part of the requested content (column 2 lines 22-54, column 4 lines 1-6 & 11-40 and column 8 lines 30-36, responding to client requests by sending an *i* th data unit (which is

the random portion) which includes positioning information relative to the other data units of the requested content); and

If the random portion is part of the requested content, sending the rest of the requested content to the one of the plurality of clients via the one of the plurality of channels (column 2 lines 40-54 and column 4 lines 18-60).

8. In reference to claim 2, Waldvogel teaches the method of claim 1, wherein the plurality of data portions are transmitted simultaneously via parallel channels (column 4 lines 25-40 and figure 1, Waldvogel discloses parallel transmission to clients).

9. In reference to claim 3, Waldvogel teaches the method of claim 2, wherein said parallel channels are combined into groups of channels having the same data transmission speed in each group (column 4 lines 25-40 and column 6 lines 17-30, Waldvogel discloses groups of channels for data transmission).

10. In reference to claim 4, Waldvogel teaches the method of claim 3, wherein the plurality of data portions is transmitted simultaneously via all said groups (column 6 lines 17-30).

11. In reference to claim 28, Waldvogel teaches a system for data transmission on demand to a plurality of clients without acknowledgement, the system comprising:

A data storage device to store information content in a plurality of files (column 4 lines 34-37);

At least one server to divide the information content into a plurality of data portions and to distribute the plurality of data portions to at least one data transmission unit (column 2 lines 40-50 and column 4 lines 1-7 & 34-42);

A plurality of send boxes in the at least one data transmission unit to constantly transmit the plurality of data portions to at least one router (column 4 lines 24-38); and

The at least one router to cause information content to be constantly available to the plurality of clients at a plurality of channels, to receive a content request at one of the plurality of channels, to send a random portion from the plurality of data portions to the one of the plurality of clients, the random portion comprising data indicating whether the random portion is part of the requested content; and to send the rest of the requested content to the one of the plurality of clients via the one of the plurality of channels if the random portion is part of the requested content (column 2 lines 22-54, column 4 lines 1-6 & 11-60 and column 8 lines 30-36).

***Allowable Subject Matter***

12. Claims 5,10-13 and 15 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The format of the information content as described in claims 5,10-13 and 15, would make the independent claims allowable if rewritten into the independent claims.

***Response to Amendment***

13. Examiner acknowledges amendment filed 12/28/2004. Claims 1,2,4,5,10-13 and 15 were amended. Claims 28 and 29 were newly added. Claims 6-9,14 and 16-27 were cancelled.

***Response to Arguments***

14. Applicant's arguments with respect to claims 1-29 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Patent No. US006434610B1, Wahl, which teaches data streaming.

Patent No. US006356947B1, Lutterschmidt, which teaches a video-on-demand data delivery system.

Patent No. US006606646B2, Feigenbaum, which teaches data downloading via a proxy.

Patent No. US006073180A, Onoda et al, which teaches high speed data transfer, including no acknowledgement.

Patent No. US006658005B2, Seidel et al, which teaches data transmission with segmenting packets into protocol data units.

Patent No. 5684956, Billings, which teaches a data transmission system with parallel packet delivery.

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ramy M. Osman whose telephone number is (571) 272-4008. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.




Art Unit: 2157

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RMO

April 15, 2005

  
ATP/ETD/KAE  
SUPERVISOR, PATENT EXAMINER  
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